IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

F.A.O. NO. 4026 of 2006 (O.&M.)
Date of Decision: 26.9.2006

Jassa Singh and another.

..... Appellants

Versus

Sudarshan Kumar and others.

..... Respondents

CORAM: Hon'ble Mr.Justice Uma Nath Singh
Hon'ble Mr.Justice Mahesh Grover

....

Present: Shri A.P.S. Deol, Advocate for the appellants.

....

Mahesh Grover,J.

The present appeal has been preferred by the owner and driver of truck no. PUL-1611 (referred to hereinafter as `the truck in question' ) against award dated 25.5.2006 of Motor Accident Claims Tribunal, Jalandhar (hereinafter described as `the Tribunal') passed in M.A.C.T. Case No.2 of 2006.

On 12.5.2006, Sudarshan Kumar-injured/claimant (respondent no.1 herein) was going in bus bearing No.PB-12-B-9423 of Punjab Roadways, Ludhiana (hereinafter referred to as `the Roadways bus') from Jalandhar to Amritsar. When the Roadways bus, which was being driven by

respondent no.4-Bhupinder Singh, reached near village Kahlwan Gate, the truck in question came from Kartarpur side and struck against its driver's side. On account of the impact, the right arm of respondent no.1 came out of the window of the Roadways bus and hit the body of the truck in question, as a result of which serious injuries were received by him and his arm had to be amputated.

In a claim petition preferred by respondent no.1, the Tribunal awarded a sum of Rs.3,90,538/- on account of permanent disability suffered by him which was assessed as 80%. The drivers of both the vehicles i.e. Roadways bus and the truck in question were found guilty of contributory negligence in causing the accident to the extent of 50 : 50. Accordingly, the Tribunal directed that the driver and owner of the truck in question shall be liable to pay 50% of the awarded amount and the remaining 50% shall be paid by the driver and owners, i.e., the State of Punjab and General Manager of Punjab Roadways, Ludhiana Depot, of the Roadways bus.

The appellants have assailed the findings of the Tribunal on the ground that respondent no.1 ought to have been held guilty of negligence as well because the driver of the Roadways bus had testified to the effect that he,i.e.,respondent no.1 was keeping his arm protruding out of the window to which he,i.e. the driver had objected to.

After hearing the learned counsel for the appellants and perusing the record, we find no force in the plea of the appellants. There is no denial to the accident and there is no evidence to show that the arm of respondent no.1 was protruding out of the window. Rather, the case of respondent no.1 was that because of the impact of the truck in question which had hit the Roadways bus, his arm had fallen out resulting in the

injuries to him. Besides, it was the duty of the driver of the truck in question to ensure that he did not go so close to the Roadways bus which could threaten the safety of the vehicle, as also the passengers travelling therein. The driver of the truck in question was clearly at fault when his vehicle struck against the Roadways bus in the first instance by bring it in such close proximity so as to result in the accident. There is no infirmity in the findings recorded by the Tribunal and the appeal being devoid of any merit is dismissed as such.

( Uma Nath Singh )
Judge

( Mahesh Grover )
Judge

September 26,2006
"SCM"